

**IV. PROCUREMENT PROCEDURES FOR THE SELECTION
OF ADMINISTRATIVE CONSULTING AND
ENGINEERING/ARCHITECTURAL SERVICES**

PROCUREMENT PROCEDURES FOR THE SELECTION OF ADMINISTRATIVE CONSULTING AND ENGINEERING/ARCHITECTURAL SERVICES

It is permissible for local governing bodies to use their own staff to administer the LCDBG Program. For those not choosing to do so, applicants will need to procure professional services, such as an administrative consultant or engineer, to assist in the development of an application. 24 CFR 85.36 describes the standards you must meet in securing professional services. These regulations are included in this package. If an applicant intends to use local funds to pay for such services, then the LCDBG procurement procedures do **not** apply. In order to use LCDBG funds to pay for such services (including pre-agreement costs), the following requirements apply:

1. The application must be funded under the FY 2006 or FY 2007 LCDBG Program year;
2. The LCDBG procurement procedures must have been followed in the procurement of the engineering/architectural and/or administrative consulting firm; and
3. All tasks and corresponding costs must be identified in a written contract between the firms and the local governing body.

Failure to follow the LCDBG procurement procedures could result in disallowed costs.

Applicants for LCDBG funds shall procure their administrative consultant and engineering/architectural firms prior to the application preparation stage. Any procurement procedures undertaken prior to the first public hearing held in conjunction with the application development will **not** be accepted as being in compliance with LCDBG program requirements. Any steps taken prior to the first public hearing could result in disallowed costs. **No services other than administrative consulting, engineering, or architectural can be procured until after a grant has been awarded by the State.** Within the ceiling amounts, the State will allow applicants to request funds for the reimbursement of pre-agreement costs (application preparation fees). In order to be eligible for the reimbursement of these costs, the requirements listed above must be met. Only those local governing bodies that receive grant awards will be reimbursed for pre-agreement costs.

Again, the first public hearing must be held prior to initiating the procurement procedures. This will enable the local governing body to determine what professional services will be needed for the application (i.e. engineer for sewer or water).

Procurement Policy

24 CFR 85.36 describes the standards you must meet in securing contract services (i.e. professional, construction, and/or supplies). All local governing bodies that receive LCDBG funds must have a written and adopted procurement policy that contains all items required by 24 CFR 85.36 and the LCDBG Program.

The Grantee's procurement policy must address the following items.

1. A code of conduct that specifically prohibits elected officials, staff, or agents from personally benefiting from LCDBG procurement. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either Grantee officials, staff or agents, or by contractors or their agents must be identified [24 CFR 85.36 (b)(3)].
2. Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to insure costs are "reasonable" [24 CFR 85.36 (b)(4)].
3. Positive efforts must be made to hire minority firms, women's business enterprises, and labor surplus firms by the Grantee and the project's prime contractor [24 CFR 85.36 (e)].
4. The method of contracting outlined in the policy should be acceptable (fixed price, cost plus fixed fee, purchase orders, etc.). Cost plus a percentage of cost contracts must be specifically prohibited if LCDBG funds are involved [24 CFR 85.36 (f)(4)].
5. Procedures to handle and resolve disputes relating to procurement actions of the Grantee [24 CFR 85.36 (b)(12)].
6. All procurement transactions, regardless of dollar amount, must be conducted so as to provide "maximum open and free competition" [24 CFR 85.36 (c)]. Some of the situations considered to be restrictive of competition include but are not limited to:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business,
 - b. Requiring unnecessary experience and excessive bonding,
 - c. Noncompetitive pricing practices between firms or between affiliated companies,
 - d. Noncompetitive awards to consultants that are on retainer contracts,
 - e. Organizational conflicts of interest,
 - f. Specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
 - g. Any arbitrary action in the procurement process.
7. Methods of procurement to be followed when purchasing materials and supplies or contracting for services [24 CFR 85.36 (d)]. The methods used to procure administrative consulting and/or engineering/architectural services are described below. The methods used when purchasing materials and supplies, procuring construction contractors, or contracting for professional services (other than administrative consulting and engineering/architectural services) will be discussed in detail in Section A of the FY 2006 and FY 2007 LCDBG Grantee Handbooks.

Although it is not required that applicants adopt such a policy prior to the receipt of LCDBG funds, the procurement of administrative consulting and engineering/architectural firms must

be in compliance with the State and Federal regulations governing the procurement of those professional services. However, if a local governing body wishes to adopt a procurement policy prior to grant award, then past procurement policies must be revised to reflect the current requirements for procuring professional services. The most recent sample procurement policy provided by the Office of Community Development is shown on pages 91 – 96.

24 CFR 85.36 (e) states that local governing bodies shall take necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus firms are used when possible. Grantees should include a statement encouraging these businesses to participate when advertising for procurement purposes, as well as mail copies of the solicitations to known businesses that qualify.

Conflicts of interest in the award and/or administration of contracts must be avoided. Any firm that hopes to enter into a contract with a local governing body must take care to divorce itself from the procurement process if the firm proposes to compete with other firms. Failure to do so will result in a potential or apparent conflict of interest. Conflicts of interest may be governed by federal, state, or local law or ordinance, including the State's "Code of Governmental Ethics". Among those Federal regulations with which the applicant must comply are the conflict of interest requirements in 24 CFR 570.611. These regulations are shown on pages 62 – 63.

Methods of Procurement

One of the following three methods must be employed when procuring administrative consulting and/or engineering/architectural services to be paid for with LCDBG funds.

1. Small Purchase – This method may be used to procure administrative consulting services costing less than \$100,000. Engineering/architectural services must be procured through competitive negotiation using "Qualification Statements". **The small purchase method cannot be used to procure engineering/architectural services.**

Small purchase is relatively simple whereby price or rate quotations are obtained (either by fax, telephone, or in writing) from a minimum of three sources. Three price or rate quotations must be obtained not just requested. A response of "not interested" from a source does not qualify as a price or rate quotation. It may be helpful to have a written scope of services in the event it is needed. The applicant must maintain documentation regarding the business contacted and the fee quoted for the services. Upon receiving the price quotations, the local governing body must maintain written documentation regarding the basis for selection.

2. Competitive Negotiation – This procedure must be followed when the professional fees to be charged exceed \$100,000, for procuring engineering/architectural services, or if the applicant chooses not to follow the small purchase procedure for procuring administrative consulting services. Competitive negotiation is initiated by requesting either qualification statements or proposals. Proposals must be

requested for procuring administrative consulting services and qualification statements must be requested for procuring engineering/architectural services.

The local governing body must solicit either requests for proposals or requests for qualification statements by advertising in a newspaper in the nearest metropolitan statistical area (MSA). The advertisement should indicate that the local governing body is submitting an application for LCDBG funds and the specific type of professional services that are being procured. The advertisement should list the locations and times where a package outlining the scope of services to be provided, minimum requirements, selection criteria, etc., can be obtained. Also, the deadline for the submittal of the proposal or qualification statement should be included in the advertisement. A sample advertisement requesting proposals is shown on page 64. This advertisement may be revised for requesting qualification statements.

The local governing body may publish one advertisement that requests proposals for procurement of administrative services and requests qualification statements for procurement of engineering/architectural services. The local governing body may hire the same firm to perform both duties, but it cannot **require** that one firm provide both types of services.

To assure “proposals will be solicited from an adequate number of qualified sources” [24 CFR 85.36 (d)(3)(ii)], local governing bodies must mail copies of the request for proposals as it will appear in the newspaper to a minimum of three firms that provide administrative consulting services. This must be done in addition to the publication of the request in the newspaper.

The proposal or qualification statement package should include the following information:

- a. A cover letter from the local governing body signed by the chief elected official.
- b. A detailed scope of services identifying the services to be rendered.
- c. Name of contact person with the local governing body.
- d. Deadline date and location for submittal of proposal or qualification statement.
- e. Selection criteria and the corresponding point system that will be used to rate the proposals or qualification statements received. The selection criteria may not be changed once the package has been issued. A criterion **must** be identified as a tiebreaker when using an “all or none” point system. The State recommends that a tiebreaker be identified for all point systems although it is not required except for the instance previously identified.
- f. Statement that payment for all costs associated with the preparation of the application is contingent upon funding by the State. Statement that funds for the implementation of the project are contingent upon the award of LCDBG funds by the State. Statement that the amount of

funds available for the contract will be subject to LCDBG restrictions and approval.

A sample package (without cover letter) of a request for proposals to procure administrative consulting services, and a sample package (without cover letter) of a request for qualification statements to procure engineering/architectural services is shown on pages 65 – 90.

Written results of the evaluations must be maintained as part of the documentation of the procurement process. If only one proposal/qualification statement is received, then it must be evaluated in accordance with the selection criteria in order to determine that the minimum requirements are met. The State recommends the applicant compose a committee (at least three members) of persons who have knowledge of the type of project for which funds are being requested. Those persons should have no potential conflicts of interest with any of the firms or individuals under review.

a. Request for Proposals – Administrative Consulting Services

The applicant must prepare a request for proposal that details the type of services that are needed and the selection criteria against which all responding proposals will be evaluated. Cost must be one of the selection criteria used to evaluate the proposals received and must be a **minimum of ten percent of the total possible points identified. Also, geographical preference may not be used as a selection criterion in accordance with federal regulations.**

There are two procedures that can be used to review responding proposals. The procedure that the applicant chooses to follow must be identified in the request for proposals. Neither the procedure nor the selection criteria can be changed once the proposal package has been issued. The two procedures are:

- i. Establish a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer”. The proposals would be re-evaluated and the highest scoring firm would be chosen.
- ii. Evaluate the proposal according to the selection criteria and award the contract to the highest scoring firm.

Please be advised that including the experience and background of other firms when responding to a request for proposals under the LCDBG Program is not acceptable and will result in disallowed costs except when the following conditions are met:

- i. **There must be a written contractual relationship between the two firms that specify the services that will be provided by the subcontractor; and**
- ii. **The fees paid to the subcontractor must account for at least twenty-five percent of the total contract (excluding pre-agreement costs) between the prime firm and the local governing body.**

b. Request for Qualification Statements – Engineering/architectural Services

Request for Qualification Statements must be used when selecting engineering/architectural services. A selection is made based on the competitors' qualifications, subject to negotiation of fair and reasonable compensation. **Cost cannot be an initial selection criterion. This method cannot be used to procure any services other than engineering/architectural services.** An engineering/architectural firm may be procured to perform administrative tasks, but the request for proposal procedure must be utilized to procure administrative services.

The qualification statements received must be evaluated by the selection criteria identified in the request for qualification statements package. Once the top ranked firm has been identified, the local governing body should negotiate costs with the firm.

3. Non-competitive Negotiation – This method may be used in situations that are declared emergency projects by the State's Office of Community Development or when utilizing a regional planning district or area-wide planning agency. Any services to be procured by this method must be approved in writing by the State prior to such procurement, with the exception of utilizing a regional planning district or area-wide planning agency for administrative services. It has been determined by the U. S. Department of Housing and Urban Development that it is permissible for local governing bodies to obtain administrative consulting services through "non-competitive negotiation" directly with a state or area-wide planning agency on a non-profit basis. The contract between the local governing body and the planning district or agency must provide for compensation on a "cost reimbursement" rather than a "fixed fee" basis.

Local governing bodies that choose to use a planning agency for administrative consulting services must maintain the following documentation:

- a. The rationale for the method of procurement used,
- b. The reasoning behind the selection of contract type, and
- c. A cost analysis to determine if the cost is reasonable (the cost and price detail form shown on page 70 should be used for this purpose). The planning district or agency must provide this information to the local governing body prior to the final negotiation of the contract in order for the local governing body to make the determination concerning cost reasonableness.

Preparation of Contract

The local governing body must perform some form of cost or price analysis in connection with every contract awarded with LCDBG funds. The cost/price detail summary form which is shown on page 70 can be used for this purpose. Generally, administrative consulting contracts are cost reimbursement (cost plus fixed fee) contracts where the firm is paid on the basis of costs incurred, overhead, other direct costs, and a fixed fee. Basic engineering/architectural and design contracts should be lump sum contracts where the firm is paid on the basis of work completed. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.

The State allows applicants to request funds for pre-agreement and administrative costs; the maximum amounts that can be requested are identified in the Proposed FY 2006 Consolidated Annual Action Plan. An excerpt from the Proposed FY 2006 Consolidated Annual Action Plan is located in Chapter VII of this package which describes the amounts allowable for administrative services and pre-agreement costs. The local governing body **may** (but is not required to) retain up to five percent of the funds allowed for overall program administration to cover its costs of administering the LCDBG Program. Such expenses may include workshop expenses, travel, staff, legal fees, bonding fees, advertising fees, audit fees, and costs associated with Section 504 compliance. Prior to negotiating the administrative contract, you should determine the general local government expenses that can be expected as a result of administering the program and retain those funds accordingly.

Engineering/architectural fees and pre-agreement costs may also be requested within the ceiling amounts. The amount of funds that can be requested are identified in the Proposed FY 2006 Consolidated Annual Action Plan. If, after a project has been funded, the scope of the project changes significantly, the State will make a determination as to the actual amount that will be allowed for engineering/architectural costs. This determination will be made on a case-by-case basis.

The contract must identify the fees to be charged for each type of service. For example, the administrative consultant's contract must identify the pre-agreement costs separately from overall program administration costs. The engineer's or architect's contract must identify the individual charges for pre-agreement costs, basic services, inspections, surveying, testing, sanitary sewer evaluation survey, et cetera. The contract must identify a maximum amount to be paid for additional services such as testing and/or sanitary sewer evaluation survey; however, the State will only pay the actual invoice amount from the firm performing the corresponding service.

If the local governing body is not funded under the FY 2006 or FY 2007 LCDBG Program, the State will not be liable for any expenditures incurred by the local governing body. The procurement procedures undertaken for the FY 2006 - FY 2007 LCDBG Program will not be considered as meeting the procurement requirements of any other funding years; nor will any procurement procedures undertaken for previous program years be considered as meeting the procurement requirements for the FY 2006 - FY 2007 Program years. Following grant award, the State will advise the recipients of the amount of LCDBG funds that will be allowed for administrative consulting and/or

engineering/architectural fees. Therefore, the amount of the contract to be payable with LCDBG funds between the local governing body and the administrative consulting firm and/or the engineering or architectural firm will be contingent upon the amount of funds which are awarded/allowed by the LCDBG Program. If the local governing body cannot or does not intend to supplement the LCDBG funds allowed for administrative and engineering/architectural fees, the selected firm must be made aware that the contracted amount for services to be rendered is subject to the availability and allowance of LCDBG funds.

If the local governing body is eligible and intends to submit two applications, the local governing body must decide if it wants to procure the same firms for both applications or to procure different firms for each application. If the same firms are hired for both applications, then it is recommended that separate contracts be prepared to correspond to each application; please keep in mind that neither of the applications may be funded or one or both of the applications may be funded.

The following stipulations must be included in administrative contracts: i) all of the services to be performed (including the submittal of close-out documents) will be completed within the thirty-six month period covered by the recipient's contract with the State, ii) ten percent of the overall program administrative contract amount will be retained by the local governing body until that body has received acceptance/approval of the closeout documents by the State, i.e., conditional closeout, iii) the contract conditions will be cleared within six months of the date of the "authorization to incur costs" letter that the OCD sends to the local governing body following the grant award, and iv) the separate amounts to be charged by the firm for application preparation and overall program administration.

The following stipulations must be included in the engineering/architectural contracts: i) the plans and specifications must be completed within six months of the date of the "authorization to incur costs" letter, ii) the advertisement to solicit bids for the construction contract must be published within thirty days of the "authorization to advertise for bids" letter issued by the OCD, and iii) the separate amounts to be charged by the firm for pre-agreement and other services provided by the firm.

A sample contract for administrative consulting services is shown beginning on page 75. While many engineering or architectural firms may choose to use the Standard Form of Agreement Between Owner and Engineer for Professional Services, or the Standard Form of Agreement Between Owner and Architect, others may use a different contract. Regardless of the contract being used, the terms and conditions shown as Part II of the sample contract shown on pages 75-90 for professional services must be made a part of the engineering/architectural contract if LCDBG funds are used to pay for these services.

The form of contract for engineering/architectural services should include adequate descriptions and explanations of the services that the engineer/architect is to provide (both basic and additional), the local governmental body's responsibilities, times for rendering services, payments to engineer, opinions of cost, general considerations, definitions, special provisions, payment schedules, and appropriate exhibits. Any standard engineering/architectural contract shall be modified to include LCDBG requirements.

Requirements for the LCDBG program that must be addressed in the engineering/architectural contracts being paid for with LCDBG funds are:

1. The basis of payment to the engineer/architect cannot be cost plus a percentage of cost or a percentage of construction cost.
2. Payment is subject to the availability of FY 2006 or FY 2007 LCDBG funds from the State. It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of LCDBG funds allowed by the State for engineering/architectural services. LCDBG funds will only be used for pre-agreement services and engineering/architectural services which are provided following the local governing body's receipt of a grant award and an "Authorization to Incur Costs" letter from the State's Office of Community Development. If the engineering/architectural firm plans to charge for application preparation, the fees for that task must be identified separately. If the local governing body does not receive funding under the FY 2006 – FY 2007 LCDBG Program years, the engineering/architectural firm will not be entitled to any compensation for any services rendered and the engineering/architectural contract should be terminated.
3. Engineering/architectural plans and specifications must be completed within six months of the local governing body's receipt of an "Authorization to Incur Costs" letter. For projects which are not subject to approval by DHH (streets and fire stations), a set of final plans and specifications and a copy of the final cost estimate must be submitted to the Office of Community Development for review within the six month period. For projects which are subject to approval by DHH (sewer collection, sewage treatment, and potable/fire protection water systems), a set of plans and specifications shall be submitted to DHH for approval and a copy of the plans and specifications along with a copy of the final cost estimate shall be submitted to the Office of Community Development for review within the six month period. If, at the end of the six month calendar period, the plans, specifications, and cost estimate have not been submitted as specified above, \$250 per working day will be deducted from the amount of LCDBG funds payable to the engineer/architect for basic services. The State reserves the right to grant an extension where the reasons for not meeting the required time frame were clearly beyond the control of the engineer/architect.
4. The first advertisement to solicit bids for the construction contract must be published within thirty days of the "authorization to advertise for bids" given by the State for all public facilities projects. Failure to comply with this requirement will result in an assessment of \$250.00 per working day. The \$250 will be deducted from the amount of LCDBG funds payable to the engineer/architect for basic services. The State reserves the right to grant an extension where the reasons for not meeting the required time frame were clearly beyond the control of the engineer/architect.
5. The terms and conditions shown in the sample contract for professional services (Part II) must be revised to refer to the engineer/architect and must also be included as a part of the engineering/architectural contract.

It is *recommended* that the local governing body have its attorney review the contracts prior to execution.

Contractor Clearance

If a local governing body is successful in receiving a grant award, contractor clearance will have to be obtained from the Office of Community Development on all administrative consulting and engineering/architectural firms that have not provided services to grant recipients under the LCDBG Program within the previous five program years, regardless if local or LCDBG funds will be used to pay for the services. Such clearance must be obtained immediately following the grant award by the State and before any costs, other than pre-agreement costs, are incurred. Firms that have participated in the LCDBG Program within the previous five program years do not require contractor clearance. As an example, a firm that will provide services to a local governing body under the FY 2006 LCDBG Program must have provided services to a local governing body receiving a grant under the FY 2001, FY 2002, FY 2003, FY 2004, or FY 2005 LCDBG program years; if not, the contractor clearance must be requested from the Office of Community Development.

Summary of the Procurement Process

The following provides a brief chronological summary of the steps that are to be followed when procuring administrative consulting and engineering/architectural services.

1. The local governing body may or may not choose to prepare and adopt a written procurement policy pertaining to the procurement of professional services for the LCDBG Program prior to the submittal of the application. In either case, the procurement of the administrative consulting and engineering/architectural firms must be in accordance with the LCDBG Program procedures. If the local governing body is successful in having an application funded, LCDBG funds cannot be used to pay for services rendered under any administrative consulting or engineering/architectural contracts that were **not** procured in accordance with the LCDBG program requirements.
2. The local governing body must hold its public hearing for the purpose of receiving citizen input regarding the type of project for which funds will be applied.
3. After the local governing body has decided on a potential project, it must determine which type(s) of professional services will be needed - administrative consulting and/or engineering/architectural.
4. Procure the required professional services through small purchase, competitive negotiation, or non-competitive negotiation.
5. Prepare and enter into contract with the selected firms with the understanding that (a) **the State shall not be liable for any expenditures incurred by the local governing body if the local governing body is not funded under either the FY 2006 or FY 2007 LCDBG Programs and** (b) the amount of LCDBG funds available to pay for the contracted services is subject to the availability and allowance determined by the State. The contract must identify the specific amounts being charged for the services rendered. It must be stipulated in the appropriate contracts that engineering/architectural plans and specifications will be prepared and the contract conditions will be cleared within six months of the "authorization to incur costs" letter. Also, the first advertisement to solicit bids

for the construction contract must be published within thirty days of the “authorization in advertise for bids” given by the State for all public facilities projects. Failure to comply with this requirement will result in an assessment of \$250.00 per working day. The \$250 will be deducted from the amount of LCDBG funds payable to the engineer/architect for basic services.

6. If the local governing body is successful in receiving a grant award, contractor clearance will have to be obtained from the State immediately following grant award for those firms that have not participated in the implementation of an LCDBG Program within the previous five program years. The State will not issue this clearance during the application stage.
7. Following the selection of the administrative consulting and/or engineering/architectural firm(s), the local governing body will prepare its application and publish a public notice advising the public of the project for which funds are being requested.

PROCUREMENT

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85--ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS--Table of Contents

Subpart C--Post-Award Requirements

Sec. 85.36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

- (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed.

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for

bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and engineering/architectural services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial

quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will **cite** specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations

(29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). [53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]



(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

(b) *Conflicts prohibited.* Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or to gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above-stated restriction shall apply to all activities that are a part of the UDAG project, and shall cover any financial interest or benefit during, or at any time after, the person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

(d) *Exceptions: threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.



SAMPLE ADVERTISEMENT*
REQUEST FOR PROPOSALS FOR
ADMINISTRATIVE CONSULTING SERVICES

The _____ (City/Parish of) _____ is applying for a grant under the FY 2006/2007 Louisiana Community Development Block Grant (LCDBG) Program for the purpose of (identify the specific type of project for which funds will be requested). The _____ (City/Parish) is interested in procuring the services of an administrative consulting firm to prepare the application package and to administer and implement the project if it is successful in being funded.

The procedures for the selection of this firm will be in accordance with the procurement requirements of the LCDBG Program. All responses received will be evaluated in accordance with the selection criteria and corresponding point system that is identified in the request for proposals package. That package also identifies the scope of services to be performed by the selected firm.

The _____ (City/Parish) will**

Interested parties are invited to secure a proposal package from _____ (name of person) _____ at _____ (address and telephone number) _____. The response to this request must be hand-delivered or mailed to the above named person at the above named address in such a manner that it is received no later than _____ (time) _____ on _____ (date) _____.

The _____ (City/Parish) is an Equal Opportunity Employer. We encourage all small and minority-owned firms and women's business enterprises to apply.

***This is a sample notice soliciting proposals for an administrative consulting firm. Each local governing body must prepare a request for proposals that is specific to its own needs. Refer to the sample request for qualifications for a similar, acceptable format. This notice may also be revised as a combined notice requesting qualification statements from engineering/architectural firms and requesting proposals from administrative consulting firms.**

****The local governing body must state one of the following: a) award the contract to the respondent obtaining the highest score in the evaluation process or b) conduct oral interviews with those firms receiving points within the range of ____ to ____ for the purpose of obtaining a "best and final offer"; following those interviews the proposals will be re-scored and the highest scoring firm will be selected.**



SAMPLE PACKAGE*
REQUEST FOR PROPOSALS FOR AN ADMINISTRATIVE CONSULTANT

The Village of Sleepy Hollow is accepting proposals from consultants for management and administrative services required by the Village for the preparation of a Louisiana Community Development Block Grant (LCDBG) Program and subsequent administration/implementation of that program if funded by the State. The project for which funds will be requested consists of

PART ONE: MANAGEMENT AND ADMINISTRATION

The level and scope of services, if any, will be determined by the Village. A fixed sum contract on a cost reimbursement basis will be negotiated with the actual fees for services subject to approval by and funding from the State. Local funds will be used to pay for costs, if any, for applications that are not funded under the LCDBG Program. If the application is not funded by the State, no services beyond the application stage will be required. Therefore, neither the State nor the local governing body will be liable for any other expenditures under the contract. If the application is funded, LCDBG funds can be utilized for the payment of pre-agreement costs and overall program administration costs that are associated with the funded LCDBG program; such costs must be within the amounts allowed under the LCDBG Program. The scope of services that the consultant must be prepared and qualified to provide are as follows:

- a. Prepare the FY 2006/2007 LCDBG Application. If a fee will be charged for the preparation of the application, then a separate cost must be identified for pre-agreement services.
- b. Prepare Environmental Review Record and submit all other items required to clear the contract conditions. All contract conditions must be cleared within six months of the Village's receipt of an "Authorization to Incur Costs" letter from the State.
- c. Prepare the Requests for Payment to ensure consistency with the procedures established for the LCDBG Program.

* **This is a sample only; each governing body must prepare a request for proposals that is specific to its own needs.**

- d. Ensure that the community has an acceptable financial management system as it pertains to finances of the LCDBG program. An acceptable system includes, but is not limited to, cash receipts and disbursements journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
- e. Establish project files in the local governing body's office. These files must demonstrate compliance with all applicable State, local, and federal regulations. The project files must be monitored throughout the program to ensure that they are complete and that all necessary documentation is being retained in the community's files.
- f. With the assistance of the community, help conduct public hearings. This includes, but is not limited to, such things as assisting with public notices, conducting hearings, et cetera.
- g. Assist grant recipient in complying with regulations governing land acquisition (real property, easements, rights of ways, donation of property, et cetera).
- h. Assist the engineer in the preparation of all bid documents and supervise the bidding process consistent with state and federal regulations.
- i. Secure the Secretary of Labor's wage decision from the State and include it in the bid documents.
- j. Prepare construction contracts which comply with State and federal regulations. Examples are Conflict of Interest, Access to Records, Copeland Anti-Kickback Act, Safety Standards, Architectural Barriers, Flood Insurance, Clean Air and Water Act (for contracts over \$100,000), HUD Handbook (6500.3), 24 CFR 85.36, Section 3, Section 109, Title VI, Civil Rights Act, EO 11246 (for contracts over \$10,000), Section 503, et cetera.
- k. Obtain contractor clearance(s) from the State.
- l. Check weekly payrolls to ensure compliance with wage decisions. Conduct on-site interviews and compare the results with the appropriate payrolls.
- m. Monitor construction to ensure compliance with equal opportunity and labor standards provisions.
- n. Make progress inspections and certify partial payment requests.
- o. Attend and assist the Village during the State's monitoring visit(s). Prepare Village's response to any monitoring findings.
- p. Assist in a final inspection of the project and assist the Village in the issuance of a final acceptance of work.
- q. Prepare the Section 504 self-evaluation and transition plan, if applicable.
- r. Prepare analysis of impediments to fair housing.

- s. Assist Village in meeting the State's financial reporting requirements.
- t. Prepare close-out documents.

PART TWO: PROPOSALS

Proposals will be considered by the Village at a meeting to be held at 7:30 p.m. on the 31st day of July, 2005. In order to be considered, proposals must be received by the Village Clerk prior to 3:00 p.m. on the 31st day of July, 2005. The Village reserves the right to reject any or all proposals. All proposals should be sealed and marked on the outside:

FY 2006/2007 LCDBG APPLICATION
PREPARATION AND IMPLEMENTATION PROPOSAL
ADMINISTRATIVE CONSULTANT

All proposals will be scored and ranked with the highest rated firm being awarded a contract.**

The Proposal must include a brief history of the firm and a resume of each person in the firm who will be assigned to the project. The proposal must also include a list of local governing bodies for which the firm has been under contract with for LCDBG administration during the last four calendar years; this list will be used for reference purposes. All references must indicate excellent program performance.

Two copies of the proposal and the required supplemental information should be provided.

PART THREE: SELECTION CRITERIA***

All responses to the proposal will be evaluated according to the following criteria and corresponding point system. The proposals will be evaluated on the basis of written materials. Sufficient information must be included in the proposal to assure that the correct number of points is assigned. Incomplete or incorrect information may result in a lower score.

▪ **REQUIRED PRICE CONSIDERATION****** ? pts.

The lowest priced proposal will receive the maximum points for price. Other, more expensive, proposals will receive reduced amounts of points awarded for price based on the following formula with rounding to the nearest tenth:

**** If a competitive range and oral interviews will be held, then the package must state that procedure.**

$$\frac{\text{Lowest Proposal}}{\text{More expensive proposal}} \times \text{Total Possible Price Points} = \text{Points allocated to a more expensive proposal}$$

Example:

100 points is chosen as the amount of total possible points. (Other point scales may be chosen)

10% of total possible points is chosen for price consideration (Percents greater than 10% may be chosen)

Proposal 1 comes in at \$ 27,000

Proposal 2 comes in at \$ 20,000

Proposal 3 comes in at \$ 30,000

Step 1 Determine the points allocated for price -- $100 \times 10\% = 10$ points

Step 2 Award the full ten points to the lowest priced proposal (Proposal 2 gets **10 points**)

Step 3 Allocate a proportionally reduced amount of points to the more expensive proposals

Proposal 1 $\frac{20,000}{27,000} \times 10 = \mathbf{7.4 \text{ points}}$

Proposal 3 $\frac{20,000}{30,000} \times 10 = \mathbf{6.7 \text{ points}}$

- OPTIONAL CONSIDERATIONS: (These are sample criteria and may be modified by applicant)

Educational background of project manager who will be assigned to project - the highest level attained will receive the assigned number of points shown for that level

High school diploma	<u> ? </u> pts.
College degree	<u> ? </u> pts.
Masters or PhD	<u> ? </u> pts.

Firm's experience in administering LCDBG projects during the last four calendar years; name of locality under contract with the firm and type of project administered

Administered no LCDBG projects	<u> ? </u> pts.
Administered 1-5 LCDBG projects	<u> ? </u> pts.
Administered more than 5 LCDBG projects	<u> ? </u> pts.

*** **These are sample criteria only. Each local governing body must develop its own criteria and identify those along with the corresponding point system (including ranges) which will be used to evaluate the proposals received.**

**** **Price must be one of the criteria utilized in evaluating proposals and must be evaluated using a point system which allocates at least ten percent of the total possible points to price consideration.**

Length of time the firm has been in business:

less than 5 years	<u> ? </u> pts.
5 to 10 years	<u> ? </u> pts.
Over 10 years	<u> ? </u> pts.

Previous experience with the Village:

Very satisfactory	<u> ? </u> pts.
Satisfactory	<u> ? </u> pts.
Unsatisfactory or no previous experience	<u> ? </u> pts.

TOTAL POINTS FOR REQUIRED AND OPTIONAL CONSIDERATIONS ? PTS.

Questions concerning this proposal should be addressed to Lucy Lane at 505-555-1212. Proposals should be hand-delivered to Lucy Lane, Village Clerk, at the Village Hall at 1 Main Street in Sleepy Hollow or mailed to Lucy Lane, Village of Sleepy Hollow, Post Office Box 96, Sleepy Hollow, Louisiana, 70800.

Cost and Price Detail

Name of Consultant		Date of Proposal	
Street Address		Federal ID Number	
City, State, Zip		Total Price \$	
<p>A. <u>Direct Labor</u> (specify personnel by name) Attach a copy of the scope of services identified in the contract. Each task identified in the scope of services should be assigned an estimated amount of time for completion. The total amount of time identified on the scope of services should correspond to the estimate in this section.</p>			
	<u>Est. No. of Days</u>	<u>Daily Rate</u>	<u>Est. Cost</u>
1.			
2.			
3.			
4.			
5. <u>Total Direct Labor</u>			
B. <u>Overhead/Indirect Costs</u>	<u>Rate</u>	<u>Base</u>	<u>Est. Cost</u>
C. <u>Other Direct Costs</u>			<u>Est. Cost</u>
1. Transportation	___ # of on site visits		\$
2. Per Diem	___ # of days @ \$___/day		\$
3. Reproduction	___ # of pages @ \$___/page		\$
4. Other (specify)			\$
a.			\$
b.			\$
c.			\$
d.			\$
5. <u>Total Other Direct Costs</u>			\$
D. <u>Subcontracts</u>			
<u>Name of Subcontractor(s)</u>		<u># of days of effort</u>	<u>Est. Cost</u>
1.			\$
2.			\$
3. <u>Total Subcontractor Cost</u>			\$
Total Estimated Costs (Line A5+B+C5+D3)			\$
Profit			\$
Total Price			\$

CERTIFICATIONS

Contractor

- A. Has a federal agency or a federally certified state or local agency performed any review of your accounts or records in connection with any other federal grant or contract within the past 12 months? ____ YES ____ NO

If yes, give name, address, and telephone number of the reviewing office:

- B. This summary conforms with the applicable cost principals.

- C. This proposal is submitted for use in connection with and in response to _____. This is to certify that to the best of my knowledge and belief the cost and pricing data summarized herein are complete, current, and accurate as of _____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the sub agreement price may be subject to downward renegotiation and/or recoupment where the above costs and pricing data have been determined, as a result of audit, not to have been current complete and accurate as of the day above.

Date of Execution

Signature and Title of Proposer

Grantee Reviewer

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appears acceptable for sub agreement award.

Date of Execution

Signature and Title of Reviewer

Additional Reviewer, if needed

Date of Execution

Signature and Title of Reviewer

SAMPLE PACKAGE *

REQUEST FOR QUALIFICATION STATEMENTS
FOR ENGINEERING SERVICES

The _____ (City/Parish) _____ is seeking assistance for engineering services needed to prepare the application for FY 2006/2007 LCDBG funds and subsequent implementation of that program, if funded by the State. The type of project involved is _____

The _____ (City/Parish) _____ is soliciting qualification statements for engineering services to assist the _____ (City/Parish) _____ with preliminary engineering, design engineering, and inspections of this project in compliance with LCDBG Program requirements. The agreement will be on a lump sum, fixed price basis (or cost reimbursement "not to exceed" basis), with payment terms to be negotiated with the selected offerer. Reimbursement for services will be contingent on the _____ (City/Parish) _____ receiving funding from the State. Local funds will be used to pay for costs, if any, for applications that are not funded under the LCDBG Program. If the application is not funded by the State, then no services beyond the application stage will be required. Therefore, neither the State nor the local governing body will be liable for any other expenditures under the contract. The maximum amount of pre-agreement and program implementation engineering fees that can be paid for implementation with LCDBG funds will be determined by the State and may require adjustments in the proposed contract amount.

The services to be provided will include, but not be limited to:

1. Assisting in the preparation of the application package (pre-agreement costs).
2. Designing system improvements and construction engineering. The preliminary plans and specifications must be completed within six months of the City's/Parish's receipt of the "Authorization to Incur Costs" letter from the State's Office of Community Development. Submit plans and specifications to the Louisiana Department of Health and Hospitals, if applicable, and to the Office of Community Development within the aforementioned six month period.
3. Assisting the administrative consultant with the construction bid package in conformance with applicable federal requirements and supervising the bid advertising, tabulation, and award process, including preparing the advertisements for bid solicitation, conducting the bid opening, and issuing the notice to proceed. The first advertisement for bid must appear within thirty days of receiving authorization to advertise for bids from the State.

*** This is a sample only. Each governing body must prepare a request for qualification statements package that is specific to its own needs. Refer to the sample request for proposals for administrative consultants for a similar, acceptable format.**

4. Assist in conducting the preconstruction conference.
5. Field staking, on-site supervision of construction work, and preparing inspection reports.
6. Reviewing and approving all contractor requests for payment and submitting approved requests to the governing body.
7. Providing reproducible plan drawings to the City/Parish upon project completion.
8. Conducting final inspection and testing.

Respondents will be evaluated on the basis of the written materials submitted and according to the following factors: **

1. Experience of the firm with this type of construction project under the LCDBG Program during past five calendar years

- | | |
|--|------------------|
| No previous experience | <u> ? </u> pts |
| Under contract with 1-10 grantees during past five calendar years (identify grantee and type of project) | <u> ? </u> pts |
| Under contract with more than 10 grantees during past five calendar years (identify grantee and type of project) | <u> ? </u> pts |

2. Proximity of firm to local governing body***

- | | |
|-------------------------|------------------|
| Less than 60 miles away | <u> ? </u> pts |
| More than 60 miles away | <u> ? </u> pts |

3. Length of time the firm or project engineer has been in business

- | | |
|-------------------|-------------------|
| Less than 5 years | <u> ? </u> pts. |
| 5 to 10 years | <u> ? </u> pts. |
| Over 10 years | <u> ? </u> pts. |

**** The corresponding point system and breakdown of points must be specifically identified.**

***** Geographic preference may be used as a selection factor for engineering services if adequate competition (two or more firms that are responsive and responsible) are located within the distances identified.**

4. Previous experience with the City/Parish:

Very satisfactory	<u> ?</u> pts.
Satisfactory	<u> ?</u> pts.
Unsatisfactory or no previous experience	<u> ?</u> pts

In the event of a tie for the highest score, oral interviews will be held with those firms. As a result of those interviews, the City/Parish will determine which firm will be selected to enter into contract negotiation. Unsuccessful offerors will be notified as soon as possible.

Questions and responses should be directed to:

Mayor/Parish President
City/Parish
Post Office Box
City, State, Zip

All responses must be received no later than _____ (date). Please state "FY 2006/2007 LCDBG QUALIFICATIONS STATEMENT-ENGINEERING SERVICES" on the outside of the package submitted.

SAMPLE *
CONTRACT FOR PROFESSIONAL SERVICES

Louisiana Community Development Block Grant Program

PART I -- AGREEMENT

This Agreement for professional services is by and between the VILLAGE OF SLEEPY HOLLOW, State of Louisiana (hereinafter called the "VILLAGE"), acting herein by Johnny Shiloh, Mayor, hereunto duly authorized, and Planners Incorporated, a corporation organized under the laws of the State of Louisiana (hereinafter called the "CONSULTANT"), acting herein by Oliver Catt, President, hereunto duly authorized;

WITNESSETH THAT:

WHEREAS, the VILLAGE intends to apply for and hopefully receive funding under the FY 2006/2007 Louisiana Community Development Block Grant (LCDBG) Programs pursuant to Title I of the Housing and Community Development Act of 1974, as amended; and,

WHEREAS, the VILLAGE desires to engage the CONSULTANT to render certain technical assistance services in connection with its Community Development Program:

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of CONSULTANT

The VILLAGE hereby agrees to engage the CONSULTANT on a contingency basis, and the CONSULTANT hereby agrees to perform the Scope of Services set forth herein under the terms and conditions of this agreement.

*** This is a sample only; each governing body must prepare a contract that is specific to its own needs.**

2. Scope of Services

The CONSULTANT shall, in a satisfactory and proper manner, perform the following services:

- a. With the assistance of the community, help conduct public hearings. This includes, but is not limited to, such things as assisting in public hearings, preparing public notices, et cetera.
- b. Prepare the FY 2006/2007 LCDBG Application.
- c. Prepare the Environmental Review Record.
- d. Prepare the Requests for Payment to ensure consistency with the procedures established for the LCDBG Program.
- e. Ensure that the community has an acceptable financial management system as it pertains to finances of the LCDBG Program. An acceptable system includes, but is not limited to, cash receipts and disbursements journal, cash control register, property register, and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
- f. Establish project files in local government office. These files must demonstrate compliance with all applicable State, local, and Federal regulations. Monitor project files throughout the program to ensure they are complete and that all necessary documentation is being retained in the community's files.
- g. If applicable to the program, assist grant recipients in complying with regulations governing land acquisition (real property, easements, rights of ways, donation of property, et cetera).
- h. Assist the engineer in the preparation of all bid documents and supervise the bidding process consistent with State and Federal regulations.
- i. Secure the Secretary of Labor's wage decision from the State and include it in the

bid documents.

- j. Prepare construction contracts which comply with State and Federal regulations.
Examples of the regulations include, but are not limited to, Access to Records, Copeland Anti-Kickback Act, Safety Standards, Architectural Barriers, Flood Insurance, Clean Air and Water Act (if contract over \$100,000), HUD Handbook (6500.3), 24 CFR 85.36, Section 3, Section 109, Title VI, Civil Rights Act, EO 11246 (if contract over \$10,000), Section 503, et cetera.
- k. Obtain clearance on all “prime” contractors from the State.
- l. Check weekly payrolls to ensure compliance with wage decisions. Conduct on-site interviews and compare the results with appropriate payrolls.
- m. Monitor construction to ensure compliance with equal opportunity and labor standard provisions.
- n. Make progress inspections and certify partial payment requests.
- o. Attend and assist the Village during the State's monitoring visit(s). Prepare Village's response to any monitoring findings.
- p. Assist Village in meeting the State's financial reporting requirements.
- q. Make a final inspection and issue a final certificate of payment.
- r. Prepare close out documents.

Services in each of the work areas shall be performed under and at the direction of the Mayor, or his designated representative.

3. Time of Performance

The services of the CONSULTANT shall commence on August 1, 2005, and be provided on a per-day basis as requested by the Mayor or his designated representative. Such services shall be continued in such sequence as to assure their relevance to the purposes of this

Agreement. The CONSULTANT must take whatever steps are necessary to assure that the VILLAGE's contract conditions are cleared within six months of the date of the VILLAGE's "Authorization to Incur Costs" letter. If at the end of the six month calendar period, all contract conditions (with the exception of the preparation of engineering/architectural plans and specifications) are not cleared, \$250 per working day will be deducted from the amount of administrative funds contracted to the CONSULTANT. The State reserves the right to grant an extension where the reasons for not meeting the required timeframe were clearly beyond the control of the CONSULTANT. In any event, all of the services required and performed hereunder shall not be completed until the VILLAGE has received notification of final close out from the State.

4. Access to Information

It is agreed that all information, data, reports, records, and maps as are existing, available, and necessary for the carrying out of the work outlined above, shall be furnished to the CONSULTANT by the VILLAGE. No charge will be made to the CONSULTANT for such information, and the VILLAGE will cooperate with the CONSULTANT in every way possible to facilitate the performance of the work described in this contract.

5. Compensation and Method of Payment

Payment under this contract is contingent upon the VILLAGE receiving approval from the State for funds under the FY 2006/2007 LCDBG program. CONSULTANT shall only be paid for services rendered under this agreement from funds allowed by the State for pre-agreement and administrative costs under the provisions of the grant awarded to the VILLAGE. CONSULTANT will not be entitled to any reimbursement for pre-agreement costs and program administration either from the VILLAGE or the State, if the VILLAGE does not receive a grant award and an authorization to incur costs from the State's Office of Community Development.

There will be no charge by the Consultant for pre-agreement services if the VILLAGE does not receive a grant award. If the Grant is awarded, reasonable pre-agreement costs as well as program administration costs will be allowed under the LCDBG Program.

Upon the VILLAGE's receipt of an award of a grant and an authorization to incur costs letter from the State's Office of Community Development, the amount of compensation and reimbursement to be paid CONSULTANT under this contract for pre-agreement and program administration costs shall not exceed Thirty-Five Thousand and No/100 (\$35,000.00) Dollars.

The VILLAGE shall retain ten percent (10%) of CONSULTANT's overall program administrative fees until the VILLAGE receives a letter of conditional close out from the State, whereupon this retainage shall be paid to CONSULTANT.

CONSULTANT will be compensated for travel in accordance with the State's Policy and Procedures Memorandum Number 49.

The CONSULTANT shall submit invoices to the Village for payment. These invoices shall summarize the number of person-days provided in performing assigned tasks, the tasks completed, and travel and per diem expenses incurred in the preceding month.

6. Ownership Documents

All documents, including original drawings, estimates, specifications, field notes, and data are the property of the VILLAGE. The CONSULTANT may retain reproducible copies of drawings and other documents.

7. Professional Liability

The CONSULTANT shall be responsible for the use of reasonable skills and care benefiting the profession in the preparation of the application and in the implementation of the LCDBG Program.

8. Indemnification

The CONSULTANT shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of the CONSULTANT, and shall exonerate, indemnify, and hold harmless the VILLAGE, its officers, agents, and all employees from and against them, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax Laws. Further, the CONSULTANT shall exonerate, indemnify, and hold harmless the VILLAGE with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this contract by the CONSULTANT. This shall not be construed as a limitation of the CONSULTANT's liability under this Agreement or as otherwise provided by law.

9. Terms and Conditions

This Agreement is subject to the provisions titled, "Part II, Terms and Conditions" consisting of nine (9) pages, attached hereto and incorporated by reference herein.

10. Address of Notices and Communications

Johnny Shiloh, Mayor
Post Office Box 96
Sleepy Hollow, LA 70800

Oliver Catt, President
Planners, Inc.
500 Broadway
Baton Rouge, LA 70801

11. Captions

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

12. Authorization

This Agreement is authorized by Village Resolution _____, adopted _____, copies of which are attached hereto and made a part hereof.

ATTEST:

VILLAGE OF SLEEPY HOLLOW

By: _____
Johnny Shiloh, Mayor

Date _____

PLANNERS INCORPORATED

BY: _____
Oliver Catt, President

PART II -- TERMS AND CONDITIONS

1. Termination of Contract for Cause.

If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Contract, the VILLAGE shall thereupon have the right to terminate this Contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this Contract shall, at the option of the VILLAGE, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the VILLAGE for damages sustained by the VILLAGE by virtue of any breach of the Contract by the CONSULTANT, and the VILLAGE may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the VILLAGE from the CONSULTANT is determined.

This contract for pre-agreement (application preparation) services and overall program administration will be automatically terminated if the application(s) is not funded by the State's Office of Community Development. CONSULTANT will not be entitled to any reimbursement for pre-agreement costs and for program administration either from the VILLAGE or the State, if the VILLAGE does not receive a grant award and an authorization to incur costs from the State's Office of Community Development.

2. Termination for Convenience of the VILLAGE

The VILLAGE may terminate this contract at any time by giving at least ten (10) days notice in writing to the CONSULTANT. If the Contract is terminated by the VILLAGE as provided herein, the CONSULTANT will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONSULTANT, paragraph 1 hereof relative to termination shall apply.

This contract for pre-agreement services and program administration will be automatically terminated if the application(s) is not funded by the State's Office of Community Development. CONSULTANT will not be entitled to any reimbursement for pre-agreement services and program administration either from the VILLAGE or the State, if the VILLAGE does not receive a grant award and an authorization to incur costs from the State's Office of Community Development.

3. Changes

The VILLAGE may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the VILLAGE and the CONSULTANT, shall be incorporated in written amendments to this Contract.

4. Personnel

a. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the VILLAGE.

b. All of the services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

c. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the VILLAGE. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability

The CONSULTANT shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the VILLAGE thereto: Provided, however, that claims for money by the CONSULTANT from the VILLAGE under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the VILLAGE.

6. Reports and Information

The CONSULTANT, at such times and in such forms as the VILLAGE may require, shall furnish the VILLAGE such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Records and Audits

The CONSULTANT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the VILLAGE to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit or other financial reporting purposes to the VILLAGE or any authorized representative, and will be retained for four years after the State has officially closed-out the LCDBG Program unless permission to destroy them is granted by the VILLAGE.

8. Findings Confidential

All of the reports, information, data, et cetera, prepared or assembled by the CONSULTANT under this Contract are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the VILLAGE.

9. Copyright

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to CONSULTANT for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the VILLAGE and all such rights shall belong to the VILLAGE, and the VILLAGE shall be sole and exclusive entity who may exercise such rights.

10. Compliance with Local Laws

The CONSULTANT shall comply with all applicable laws, ordinances and codes of the State and local government, and the CONSULTANT shall hold the VILLAGE harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

11. Civil Rights Act of 1964/Equal Employment Opportunity

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

During the performance of this Contract, the CONSULTANT agrees as follows:

a. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, handicap or familial status.

The CONSULTANT will take affirmative steps to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, creed, sex, color, national origin, handicap or familial status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms or compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the VILLAGE setting forth the provisions of this non-discrimination clause.

b. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin, handicap or familial status.

c. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

d. The CONSULTANT will comply with all provisions of Presidential Executive Order 11246 (Executive Order 11246) of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the VILLAGE and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the CONSULTANT's non-compliance with the equal opportunity

clauses of this Agreement or with any such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided by Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The CONSULTANT will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the VILLAGE may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the VILLAGE, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

12. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

13. "Section 3" Compliance in the Provision of Training, Employment and Business

Opportunities

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference

and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14. Interest of Members of the VILLAGE

No member of the governing body of the VILLAGE and no other officer, employee, or agent of the VILLAGE who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

15. Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

16. Interest of CONSULTANT and Employees

The CONSULTANT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

17. Access to Records

The State grantor agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are

directly pertinent to this specific contract for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of four (4) years from the official date of close out of the grant by the State.

SAMPLE * PROCUREMENT POLICY

These procedures are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the LCDBG Program. These guidelines meet the standards established in 24 C.F.R. 85.36 and State requirements.

CODE OF CONDUCT

No employee, officer, or agent of the _____ (City/Parish) shall participate in the selection or in the award or administration of a contract supported by LCDBG funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

No officer, employee or agent of the _____ shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the _____ Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

PROCUREMENT PROCEDURES

The director or supervisor of each department or agency of the _____ responsible for procurement of services, supplies, equipment, or construction obtained with LCDBG funds shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the Director or Supervisor, an analysis to determine which approach would be the most economical shall be undertaken.

The _____ shall take affirmative steps to assure that small and minority firms, women's business enterprises, and labor surplus firms are solicited whenever they are potential qualified sources. The _____ shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.

** This is a sample only. Each local governing body should revise the Policy to reflect its own specific needs/criteria.*

The _____ shall assist the prime contractor whenever possible by providing copies of lists which identify qualified small and minority firms, women's business enterprises, and labor surplus area firms.

SELECTION PROCEDURES

ALL procurement carried out with LCDBG funds, where _____ is a direct party, shall be carried out in a manner that provides maximum free and open competition. Procurement procedures will not restrict or eliminate competition. _____ shall not place unreasonable requirements on firms in order for them to qualify to do business. Nor will _____ encourage or participate in noncompetitive practices among firms. The _____ is alert to organizational conflicts which would jeopardize the negotiation process and limit competition. _____ will not require unnecessary experience or bonding requirements.

Pursuant to State law, all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. A "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerers shall be clearly stated.

All solicitations of offers shall clearly set forth all requirements which offerers must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

Consideration shall be given to such factors as the contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial and technical resources.

METHODS OF PROCUREMENT

Direct procurement by the _____ shall be made by using one of the following methods depending on the type of service to be procured.

Small Purchase Procedures. Relatively simple, informal procurement procedures will be used where the purchase of materials, supplies, equipment, and/or other property will not cost in the aggregate more than \$20,000, and for construction with a cost of less than \$100,000, except where further limited by State law or LCDBG policy. The small purchase procedure can also be utilized to procure administrative consulting and other professional services costing less than \$100,000. The only exception to professional services is for architectural/engineering services that must be procured through competitive negotiation. The procurement officer must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received (whether oral or written) shall be made a part of the file.

Competitive Sealed Bids/Formal Advertising. Under this procedure bids are publicly advertised in accordance with the State's Public Bid Law. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids.

Competitive sealed bids can be used ONLY when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

When formal advertising is used the following conditions shall be met.

1. The advertisement for bids shall be publicly advertised in accord with State law.
2. The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
3. All bids shall be opened publicly at the time and place specified in the advertisement for bids.
4. A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
5. Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the LCDBG Program.

Competitive Negotiation: Requests for Proposals/Qualification Statements This method may be used when formal advertising is not appropriate. Architectural and engineering services must be procured via requests for qualification statements; administrative consulting services must be procured via requests for proposals. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

1. Requests for proposals or qualification statements must be advertised in a newspaper in the nearest metropolitan area in accordance with the rules of the State's LCDBG Program. All submittals will be honored and entered into the competition.
2. The package for proposals or qualification statements shall identify all significant evaluation factors or selection criteria, including the corresponding point system that will be used to rate the proposals/qualification statements.

3. The selecting official (or committee, if one is designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made.
4. Contract award will be made to the responsible offerer whose submission is deemed most appropriate to the _____ with consideration for price, qualifications, and other factors set by the local governing body. Unsuccessful offerers shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.
5. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This shall always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract.

Noncompetitive Negotiation/Sole Source. Noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. Noncompetitive negotiation shall only be used when written authorization has been obtained from the State's Office of Community Development, with the one exception noted. In order to qualify for this type of procurement, one of the following circumstances must apply:

1. The item or service is available only from a single source;
2. It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
3. After solicitation of a number of sources, competition is determined to be inadequate.

The one exception to this method is that the non-competitive negotiation method may be used, without written authorization from the State, when an area-wide planning agency or regional planning and development district is utilized for administrative consulting services.

CONTRACT PRICING

Cost plus percentage of cost and percentage of construction cost methods of contracting **MUST NOT** be used. _____ shall perform cost or pricing analysis in connection with EVERY procurement action including contract modifications. Costs or prices based on estimated costs for LCDBG projects shall be allowed only to the extent that the costs incurred or the cost estimates included in negotiated prices are consistent with federal cost principals. Cost reimbursement, fixed price, per diem contracts, or a combination thereof may be utilized as appropriate.

A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined. A cost reimbursement contract **MUST** clearly establish a cost ceiling which may not be exceeded without formally amending the contract, and must identify a fixed dollar profit that may not be increased unless there is a contract amendment that increases the scope of the work.

A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract **MUST** establish a guaranteed price that may not increase unless there is a contract amendment that increases the scope of the work.

A per diem contract expected to exceed \$10,000 will not be considered unless _____ has determined that a cost reimbursable or fixed price contract is not appropriate. Cost and profit included in the per diem rate **MUST** be specifically negotiated and shown separately in the proposal. The contract must clearly establish a ceiling price that may not be exceeded without formally amending the contract.

The _____ may use a multiplier type of compensation under either the cost reimbursement or fixed price contract. The multiplier and the portions of the multiplier applicable to overhead and profit must be specifically negotiated and separately identified in the contract.

PROCUREMENT RECORDS

The _____ shall maintain records sufficient to detail the history of the procurement. The records shall include the following contract provisions and conditions:

1. Contracts other than small purchase shall contain provisions that allow for administrative, contractual, or legal remedies if contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 shall provide for termination for cause and for convenience by the _____ including the manner in which it will be done and the basis for settlement.
3. All construction contracts and subcontracts in excess of \$10,000 shall include provisions which require compliance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60).
4. All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back" Act (18 USC 874) as supplemented by DOL regulations (29 CFR Part 3).
5. All contracts or subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by DOL regulations (29 CFR Part 5).

6. All construction or repair contracts or subcontracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment or mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5).
7. Each contract shall include a notice of State requirements and regulations pertaining to reporting and patent rights under any contract involving respect to any discovery or invention which arises or is developed in the course of or under such contract, and of the State requirements pertaining to copyrights and rights in data.
8. All negotiated contracts shall include a provision that makes it possible for the State, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, or records of the contractor/firm that are directly pertinent to the contract, for the purpose of making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the contractor/firm for a period of four years after the _____ formally closes out each LCDBG program.
9. All contracts, subcontracts, and subgrants in amounts in excess of \$100,000 shall contain a provision which requires compliance with the requirements of Section 306 of the Clean Air Act (42 USC 1857 h), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
10. Contracts shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
11. The _____ will be permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the State.

CONTRACT ADMINISTRATION

The _____ shall maintain contract administration systems that insure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the _____ through legal processes shall be considered in instances of identified significant nonperformance.